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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,904	10/03/2003	Robert G. Maier	34342	2335

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EXAMINER

STRIMBU, GREGORY J

ART UNIT	PAPER NUMBER
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3634

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/678,904

Applicant(s)

MAIER, ROBERT G.

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 27-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 27-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>1/16/07</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

Claims 1, 27-43 and 49-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "window" on line 7 of claim 1 render the claims indefinite because it is unclear if the applicant is referring to the pivoting window sash set forth above or is attempting to set forth another window in addition to the window sash set forth above. Recitations such as "said geared rack portion" on line 3 of claim 36 render the claims indefinite because it is unclear if the applicant is referring to the toothed rack portion set forth above or is attempting to set forth another element of the invention in addition to the one set forth above. Recitations such as "tape-like" on line 3 of claim 39 render the claims indefinite because it is unclear what comprises a tape "like" member. How much like a tape must a member be before it can be referred to as "tape-like"? Recitations such as "a slide channel of a window frame" on lines 13-14 of claim 41 render the claims indefinite because it is unclear if the applicant is referring to the slide channel of the window frame set forth above or is attempting to set forth another slide channel in addition to the one set forth above. Recitations such as "between the pivoting end" on line 15 of claim 49 render the claims indefinite because it is unclear what other element of the invention the first anti-bow latch member is disposed between.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1 and 28-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Guelck. Guelck discloses a window assembly including a latching system and a pivoting window sash 40 having a pivoting end and a non-pivoting end, said latching system comprising: an upper latch member 56 disposed near the non-pivoting end of the window sash; an anti-bow latch member 50 disposed between the pivoting end of the window and said upper latch member; and an activating member (not numbered, but comprising the handle of the upper latch member 56 as shown in figure 3) operationally connected to said upper latch member and said anti-bow latch member for operating both said upper latch member and said anti-bow latch member, wherein said activating member is mounted to the window sash, wherein the pivoting window sash 40

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is slidable within a slide channel 21 of a window frame 20, both of said upper latch member 56 and said anti-bow latch member 50 being individually engageable with the slide channel of the window frame, an operating mechanism 52, said activating member being connected to at least one of said upper latch member and said anti-bow latch member 50 via said operating mechanism 52, the operating mechanism 52 comprises a vertical linking member connected to both of said anti-bow latch member 50 and at least one of said horizontal linking member and said upper latch member 56, a rolling member/pivoting component 55.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27, 31, 33, 37, 38, 41-43, 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guelck, as applied to claims 1 and 28-30, and further in view of Morse. Guelck, as set forth above, is silent concerning a horizontal linking member.

However, Morse discloses a latching system for a window comprising an activating member 5, a first 7 and second 7' horizontal linking members for operationally connecting said activating member with first 4 and second 4' upper latch members disposed within the sash rail, wherein actuating said activating member disengages said

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first and second upper latch members from the first slide channel, a second activating member 6 comprising a rotating cam.

It would have been obvious to one of ordinary skill in the art to provide Guelck with an activating member, as set forth by Morse, to increase the ease with which the latching system can be operated and to improve the aesthetics of the window assembly.

Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guelck as applied to claims 1 and 28-30, and further in view of Menns. Guelck, as set forth above, is silent concerning a horizontal linking member.

However, Menns discloses a window assembly comprising an operating mechanism 38 and 41, an activating member 43 (figure 14) being connected to an upper latch member 43 (figure 13) via the operating mechanism, the operating mechanism further includes a horizontal linking member 39 connected to both of said activating member and said upper latch member; and a vertical linking member 41 connected to one of said horizontal linking member and said upper latch member, wherein said vertical linking member includes a rotating gear 41, and said horizontal linking member 39 includes a toothed rack portion 40 for engagement with said rotating gear.

It would have been obvious to one of ordinary skill in the art to provide Guelck with an operating mechanism, as taught by Menns, to increase the reliability of the operating mechanism.

Claims 33-35, 37, 38, 44-48 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guelck as applied to claims 1 and 28-30, and further in view of Kelley et al. Kelley et al. discloses a horizontal linking member 202 connected to an upper latch member 182, a rotating cam 136, an elastically-loaded piston rod 172, means 160, 162 for winding the cable around the cam, the means 160, 162 comprising first and second activating members.

It would have been obvious to one of ordinary skill in the art to provide Guelck with an elastically loaded piston rod construction, as taught by Kelley et al., to improve the aesthetics of the window assembly and to enable the upper latch members to automatically return to an extended position.

Claims 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guelck as applied to claims 1 and 28-30 above, and further in view of Searcy. Searcy discloses a pivoting window sash including an L-shaped slot 16 as shown in figures 9 and 10, and an operating mechanism including a flexible tape-like member 3, 6 disposed in the L-shaped slot and connected to an activating member 1.

It would have been obvious to one of ordinary skill in the art to provide Guelck with an operating system, as taught by Searcy, to increase the ease with which the latching mechanism of Guelck can be retracted.

Allowable Subject Matter

Claims 36 and 40 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, absent applicant's own disclosure, fails to teach the entire combination of elements set forth in the claimed invention. Specifically, the prior art of record fails to teach said horizontal linking member has a toothed rack portion, and wherein said vertical linking member includes a gear shaft engaged with said geared rack portion, and a toothed lower member disposed in the sash stile, said toothed lower member being engaged with said gear shaft and being connected to said anti-bow latch member. See lines 1-5 of claim 36. The prior art of record also fails to teach the operating mechanism further includes: a retractable cable connected to said anti-bow latch member; at least one pulley disposed in the sash stile, said activating member including a rotating cam, said retractable cable being connected to said rotating cam and directed by said pulley, said rotating cam containing means for winding said retractable cable around said rotating cam; and means for extending said retractable cable. See lines 1-8 of claim 40.

Response to Arguments

Applicant's arguments filed January 16, 2007 have been fully considered but they are not persuasive.

With respect to the applicant's comments concerning Guelck the examiner respectfully disagrees. Guelck clearly discloses anti-bow latching mechanisms 50. Guelck also discloses latches 56 in figure 56 wherein the latches are shown extending into a channel of the window frame 20. Additionally, Guelck discloses the movement of the latches between a locking and unlocking position on lines 4-5 of column 3. Clearly, the latches 56 of Guelck are analogous to the upper latch members as claimed by the applicant.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gregory J. Strimbu
Primary Examiner
Art Unit 3634
April 17, 2007